

FIRST AMENDMENT TO ESTANCIA HILL COUNTRY ANNEXATION AND
DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO ESTANCIA HILL COUNTRY ANNEXATION AND DEVELOPMENT AGREEMENT (this "Amendment") is entered into effective as of the ____ day of _____, 2018 by and between **CITY OF AUSTIN**, a Texas home-rule city and municipal corporation, located in Travis, Williamson, and Hays Counties, Texas ("City") and **SLF III – ONION CREEK, L.P.**, a Texas limited partnership ("Owner").

R E C I T A L S

WHEREAS, City and Owner are parties to that certain Estancia Hill Country Annexation and Development Agreement, dated as of July 1, 2013 (as amended, the "Development Agreement"); and

WHEREAS, Owner previously constructed the Estancia Hill Country Phase 1 Vortex Manhole on the Onion Creek Subterranean Wastewater Interceptor, and no additional payment or contribution is required for the rights to the 3485 LUEs of wastewater capacity for the Property as described in Section 6.03 below.

WHEREAS, City and Owner desire to amend the Development Agreement upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby agree as follows:

1. Full Purpose Annexation. Section 5.01(b) of the Development Agreement is hereby deleted in its entirety, and the following substituted in its place:

"Section 5.01(b) Full Purpose Annexation. Pursuant to Section 43.127(a) of the Texas Local Government Code, Owner hereby waives the City's obligation to annex the Property for full purposes within three (3) years of the date the Property is annexed for limited purposes pursuant to Section 5.01(a) above. Owner requests that after the Property is annexed for limited purposes that the City, at its option but not obligation, annex for full purposes all or portions of the Property under the following terms and according to the following schedule:

(1) For parts of the Property for which PID bonds are then outstanding, the City may full purpose annex the area upon the retirement of all outstanding PID bonds and the release of all PID assessments against the portion of the Property to be annexed (it being agreed that PID bonds will not be issued with a maturity date greater than fifteen (15) years);

(2) Concurrent with the annexation of any land pursuant to

Section 5.01(b)(1), the City may annex any portions of the Property necessary to establish contiguity between the land annexed and the then-existing full purposes City limits, provided, however, unless otherwise required by law or authorized in writing by Owner or the owner of the property affected the maximum width annexed for such contiguity purposes shall be no greater than, at the City's option, either (a) fifty (50) feet in width whether over land or adjacent to existing right of way, or (b) the width of an existing right of way if the City elects to annex right of way to establish contiguity. The City shall negotiate with Owner regarding the location of land annexed to establish contiguity. In the event the City and Owner do not reach agreement on the location of such land annexed for contiguity, the City first shall attempt to establish contiguity along or adjacent to existing public rights of way, rather than annexing over land, to the extent feasible in the City's reasonable determination; or

(3) The City may annex for full purposes any portion of the Property which remains unannexed on or after July 16, 2034.

Before July 16, 2034 the City shall not annex any part of the Property for full purposes except as provided in any one of subsections 5.01(b)(1) through (3) above."

2. Parks and Open Space. Exhibit "B" of the Development Agreement is hereby deleted in its entirety, and Exhibit "B" attached to this Amendment is substituted in its place. Exhibit "B-1" of the Development Agreement is not modified by this Amendment.

3. Wastewater Service. Section 6.03 of the Development Agreement is hereby deleted in its entirety, and the following substituted in its place:

"Section 6.03 Wastewater Service. The City agrees to provide wastewater service to the Property in accordance with Service Extension Request Numbers 2707, 2709 and 2711 (collectively, the "**Wastewater SER**"), as it may be modified by or subject to the terms of this Agreement. The referenced number of LUEs identified in the Wastewater SER is not a reservation of capacity, but an acknowledgement of the intent to serve the Property given the Wastewater SER improvements and associated appurtenances, including the Estancia Hill Country Phase 1 Vortex Manhole (Manhole Id# 242727), constructed and paid for by Owner. The referenced number of LUEs identified cannot be transferred or sold to properties outside of the Property. Nothing contained herein shall require construction of any wastewater line or facility described below until such time as Owner applies for wastewater service for that portion of the Property to be served by such wastewater line or facility."

4. Capitalized Words. All capitalized words used in this Amendment and not otherwise defined herein shall have the respective meanings given to such words in the Development Agreement. The Development Agreement is incorporated herein by reference for all purposes.

5. Ratification and Compliance. Except as expressly amended or modified by this Amendment, the Development Agreement shall continue in full force and effect. Owner and City each hereby ratify, affirm, and agree that the Development Agreement, as herein modified, represents the valid, binding and enforceable obligations of Owner and City respectively. Owner and City each promise and agree to perform and comply with the terms, provisions and conditions of and the agreements in the Development Agreement, as modified by this Amendment. In the event of any conflict or inconsistency between the provisions of the Development Agreement and this Amendment, the provisions of this Amendment shall control and govern.

6. Binding. This Amendment shall be binding on and inure to the benefit of City, Owner and their respective heirs, executors, administrators, legal representatives, successors and assigns.

7. Governing Law. This Amendment shall be construed and governed by the laws of the State of Texas in effect from time to time.

8. Section Headings. The section headings used herein are intended for reference purposes only and shall not be considered in the interpretation of the terms and conditions hereof.

9. Construction. Each party acknowledges that it and its counsel have had the opportunity to review this Amendment; that the normal rule of construction shall not be applicable and there shall be no presumption that any ambiguities will be resolved against the drafting party in interpretation of this Amendment.

10. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties to this Amendment may execute the Amendment by signing any of the counterparts.

[Signature Pages follow]

IN WITNESS WHEREOF, City and Owner have executed this Amendment through their duly authorized representatives to be effective as of the Effective Date.

City:

CITY OF AUSTIN,
a Texas home-rule city and municipal
corporation

By: _____

Name:

Title:

Approved as to form:

By: _____

Assistant City Attorney

THE STATE OF TEXAS
COUNTY OF TRAVIS

THIS INSTRUMENT is acknowledged before me on this ____ day of _____, 2018, by _____, Assistant City Manager of the CITY OF AUSTIN, a home rule city and Texas municipal corporation.

[SEAL]

Notary Public, State of Texas

[Signature Page continues]

OWNER:

SLF III – ONION CREEK, L.P.,
a Texas limited partnership

By: SLF III Property GP, LLC,
a Texas limited liability company,
its General Partner

By: Stratford Land Fund III, L.P.,
a Delaware limited partnership,
its Sole and Managing Member

By: Stratford Fund III GP, LLC,
a Texas limited liability
company, its General Partner

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS
COUNTY OF DALLAS

THIS INSTRUMENT is acknowledged before me on this ____ day of _____, 2018, by _____, as _____ of Stratford Fund III GP, LLC, general partner of Stratford Land Fund III, L.P., sole and managing member of SLF III Property GP, LLC, general partner of SLF III – Onion Creek, L.P.

[SEAL]

Notary Public, State of Texas

Exhibit "B"
Public Parkland